

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.

Cr. Appeal No. 700 of 2000

Date of Decision : 30.11.2007

State of H.P.

...Appellant.

Versus:

Meheshwar Bali

...Respondent.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

Whether approved for reporting?¹ No

For the appellant: Mr. Varinder Verma, Addl. A.G.

For the respondent : Mr. Piyush Verma, vice counsel.

Sanjay Karol, J (Oral).

The learned Addl. Advocate General states that the inquiry has already been instituted by the Director (Prosecution), H.P. Shri R. S. Rana, Director (Prosecution) is present in the Court today and also states that the inquiry shall be completed expeditiously.

Shri R. S. Parmar, is also present in the Court today. From the record, it is clear that this officer has not been negligent in the conduct of the case before the trial Court.

In the present case, the prosecution had cited 17 witnesses. However, only 7 witnesses could be examined as relying upon the decision of the Supreme Court in ***Raj Deo Sharma v. State of Bihar*** (AIR

¹ Whether reporters of Local Papers may be allowed to see the judgment?

1999 SC 3524) the prosecution evidence was closed by the Court vide order dated 25.7.2000.

The record shows that the order closing the evidence was passed only on the basis of the decision rendered by the Supreme Court.

For the aforesaid reasons, the remaining witnesses could not be examined and more particularly the Doctor and the Investigating Officer who were to prove various documents including the post mortem report, FIR, spot map and also various steps taken by the Investigating Officer during the course of the investigation. The respondent was charged of an offence under Sections 279 and 304-A IPC in relation to an incident alleged to have taken place on 3.11.1996 at about 11.25 A.M. near local Bus Stand, Chhota Shimla, Shimla, H.P. Based on the limited evidence, he was acquitted by the Court below.

The decision ***Raj Deo Sharma (supra)*** was subsequently overruled by the Apex Court in ***P. Ramachandra Rao v. State of Karnataka*** (AIR 2002 SC 1856).

In my view, non-examination of the prosecution witnesses has resulted into mis-carriage of justice. The prosecution witnesses could not be examined to prove its case in entirety. Therefore, in the interest of justice, the matter needs to be remanded back to the trial Court for trial and examination of the remaining witnesses.

I have not gone into the merits of the matter and any observation made herein shall not be construed as an expression on the merits of the matter.

Looking into the circumstances, it is directed that the Court below shall deal with this case on priority and complete the trial within six months from the date of appearance of the parties.

It is stated at the bar that Doctor D. K. Ghosh has since retired and is residing somewhere outside the State. It is open for the State to take all necessary steps for ensuring his presence in accordance with law and for such purpose the prosecution is at liberty to move an application before the concerned Magistrate who shall, looking into the peculiar facts and circumstances of the case, take immediate decision thereupon.

For the aforesaid reasons, the judgment dated 26.7.2000 passed by the Judicial Magistrate Ist Class (II), Shimla in Cr. Case No. 42/2 of 200/96, is set aside and the matter is remanded back to the concerned Court for trial. The record be sent back immediately. The parties are directed to appear before the concerned Court on **11.12.2007**.

(Sanjay Karol),
Judge.

November 30, 2007
(rana)